A. Unregistered Marriage in The Perspective of Civil Law.

The case of unregistered marriage in the study of law in Indonesia is lack of attention. Though, various regions in Indonesia, especially areas that are not reachable from information center, require special attention in understanding the importance of marriage registration, especially in the inland areas of this country. The lack of knowledge about law makes justice hard to run better.

To review the unregistered marriage, we understand it first. In the discussion of the previous chapters, we already know the understanding of underhand marriage or commonly known as sirri marriage. Literally, sirri means confidential. From the meaning of this language so it can be inferred that sirri marriage is a marriage which is secretly conducted\(^1\). Because secretly done, then there is no registration on its implementation. The registration meant is of course the recording done in front of the Marriage Registry Officer or KUA. In its implementation, it is only attended by kyai or scholar or people who have mastered fiqh munakahat, without any clear reporting. Thus, this marriage will cause slander for perpetrators, and is considered

offense against the norm in society. In principle, this marriage does not have the force of law since having no valid marriage evidence.

While the emphatic statement is listed in The Act No. 1 Year 1974 about Marriage Article 2 Verse 2 that every marriage is recorded according to the regulation\(^2\). As well as the Peraturan Pemerintah (PP) No. 9 Year 1975 about The Implementation of Law No. 1 Year 1974 regarding Marriage Article 45, states that anyone who does not register his marriage in the KUA will be imposed sanctions fines of Rp 7,500\(^3\). Yet, in the implementation, there are still obstacles in it. This is because the understanding of the community who still hold fast on to traditional fiqh perspective. The understanding of those who assume that marriage is valid when the implementation of marriage is done according to the provisions in the books of fiqh. No need to register in the KUA and no need a marriage deed because it was not set in the days of Rasulullah.

Special attention is given by the government related to this marriage as the Bill of sirri marriage raised. It is entitled The Bill of Law of Material Support Religious Court Marital Affair. In this design contained criminal penalties for the perpetrators of sirri marriage listed on Article 143, which reads "Everyone who deliberately holds the marriage is not before the marriage registry officer referred to

\(^2\) Act No. 1 The Year 1974 about Marriage. in Chapter 1. The Basis of Marriage.

\(^3\) Peraturan Pemerintah (PP) No 9 Year 1975 about The Implementation of Act No. 1 Year 1974 about Marriage in Chapter IX. Criminal Provisions.
Article 5 Paragraph (1) sued to criminal fines of Rp 6.000.000,- (six million rupiah) or the imprisonment of 6 (six) months. Because the criminal penalties for the perpetrators of the sirri marriage is not yet legalized and is only in the form of design. Then The Bill of Law of Material Support Religious Court Marital Affair cannot be used as legal basis. Yet, there is a warning done by the government for the perpetrators of sirri marriage.

In this case, the government bans all forms of actions related to marriage that is not registered in the authorized institution because it is considered important as a function of the legal administration.

Related to the problem of sirri marriage, there are some problems caused by the impact of the marriage. Thus, it requires the assessment to answer the problems. Here are:

1. Child’s Nasab of The Marriage

   *Nasab* (blood relation) is a foundation in building a household. In a household, having offspring is the purpose of marriage. The presence of children in the house is a gift and bless of the most. Of course each parents have wish, hopefully the children become shaleh, useful for family, society, religion and nation. The hope can be vanished as not in undergird with the good and Islamic construction.

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From the statement above, it can be known that the urgency of maintaining nasab or legal offspring is very important because to achieve a bright future, it requires clarity of blood relation. Thus, the children do not have psychological issues in his way to success. To get this, the Law stipulates that marriage must be held with the terms that have been defined. Thus, the offspring will be seen as legal. This is described in The Act No. 1 Year 1974 Article 42 which reads "that legal children are those who were born in or as a result of a valid marriage". The Law considers the purity of blood relation is very important as nasab or offsprings have civil rights. Whether regarding custody rights, the rights to earn a living, and inheritance rights.

Related to nasab of children from sirri marriage results, basically the children who were born from this marriage have no legal nasab as legitimate law to his father, but have blood relation to the mother and the mother’s family. This statement is found in Act No. 1 Year 1974 Article 43 Paragraph (1), that "Children who were born outside of marriage only have a civil relation with his mother and the mother’s family". The children who were born from the invalid marriage, whether it is related to pregnancy outside of marriage or related to sirri marriage, have no nasab, except to the mother and the mother’s family.

Although the Law bears a certain rules, but the status of children’s nasab not only has a civil relationship with the biological mother and her family, children of the

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5 Act No. 1 The Year 1974 about Marriage. In Chapter IX. The Position of The Children.

6 Act No. 1 The Year 1974 about Marriage. In Chapter IX. The Position of The Children.
sirri marriage also have civil relationship with his father. The cause of the emergence of understanding is after the Constitutional Court issues a controversial decision related to the status of children of the sirri marriage or the status of children outside of marriage. In the decision, the Constitutional Court grants the petition of judicial review over Article 43 Paragraph (1) of Act No. 1 Year 1974 about Marriage.

This Judicial Review Petition proposed by a 80s dangdut singer, Aisha Mochtar or we often hear with the name Machica Mochtar. She performed sirri marriage with Moerdiono, a former official in the era of president Soeharto on 20 December 1993. The result of the marriage was born a son who was given a name MIqbal Ramadan. Both decided to divorce in 1998. In order to fight for her son, she begged for judicial review to the Constitutional Court. She tested Article 43 (1) Act No. 1 Year 1974 about Marriage.

Then from the result of the petition, the Constitutional Curt gave a verdict that reads "Child who was born outside of marriage has civil relationship with his mother and the family of his mother, and with men as the father who can be proved based on science and technology, or the other evidences according to the law has blood relation, including civil relationship with his father". Based on the decision of the Constitutional Court, children of sirri marriage or children of outside marriage are entitled to civil rights with his father. This decision gives hope for all the children in Indonesia who were born outside of marriage. Since the children become victims of

the treatment of their parents. So, the children of sirri marriage are entitled to the certificate of birth, ID Card, and can go to school and realize their dreams as well as other children.

Essentially, the impact of the decision of the Court is not only that far. The impact of the Constitutional Court decision can be widely spread to the lower layers of society. For this decision will be regarding the law of marriage in Indonesia and the marriage registry institution either civilian institutions or the KUA. Even the impact reaches the Ministry, namely the Ministry of Religion, Ministry of Women Empowerment and Children Protection, the Ministry of Justice and Human Rights, and also the Supreme Court of Indonesia, and until all across the country feel the impact of this decision. Especially for the executor of Islamic law in religious courts (PA) and the High Court of Religion (PTA)\(^8\).

Thus, the legal consequences of Children of sirri marriage besides considered to have civil relationship with the biological mother and the mother’s family, they also have the civil relationship and blood relation with the biological father and the father’s family.

2. **The Distribution of Legacy for The Wife And The Children of Marriage.**

Legacy is distribution of wealth of the dead leaving their wealth. The property can be taken for the purpose of the heir. The legacy is very related to the heir or *nasab* of family as the distribution of legacy is given to the close family only.

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Therefore, the division of legacy often makes new problems for the family, especially for the perpetrators of sirri marriage and children of the marriage.

If we go back on the Decision of the Constitutional Court which granted *Judicial review* on Article 43 paragraph (1) of Act No. 1 Year 1974 about Marriage. On the verdict, basically children have the civil rights with his father. So that, the children and wife this can get the legacy according to the rules of the division. Yet, based on the fact, the child of sirri marriage between Machica Mochtar with Moerdiono does not get inheritance from his father, after the death of his father in 2011.

Previously, Machica Mochtar had filed a case related to the division of the birthright. In legitimating substance, Pengadilan Agama (PA) South Jakarta issued a decision on Muhammad Iqbal Ramadan as a child of Machica Moctar. In the decision, Iqbal did not receive the inheritance from his father, Moerdiono. The reason why the judges rejected lawsuit from Machica is because the judges still hold fast on the Act No. 1 Year 1974 about Marriage. Thus, the judges rejected the civil relationship of Iqbal with Moerdiono and the family related to the legacy.

For other considerations, Iqbal’s status could not be stated based on the verdict of the Constitutional Court as it was only recognized as legal son of Machica and Moerdiono according to the law of religion alone since their marriage was not
registered. However, the Council of Judges granted some of Machica’s lawsuit. One of them revealed Iqbal as the son of illegal marriage.\(^9\)

The decision of Constitutional Court about the status of children from sirri marriage provokes new polemic in the order of Indonesian law. New problems appear influenced by the verdict. In addition to the question of the settlement of children’s inheritance of the sirri marriage, it also causes problems such as the division of legacy to children outside of marriage, and other issues. However, we need to emphasis that decision of the Constitutional Court is only related to the rights of the child to obtain citizenship clearly, and not for the rights associated with legacy because the wedding is neither registered nor considered legally in the eye of law (state).

Of course, in this case, the children get disadvantage. Due to the actions of the parents, children will no longer be able to claim to obtain rights. This means that depending on the good of his father and the family of his father. The legacy problem for the children of sirri marriage is a difficult problem and not easily accepted both the wife and the children unless there is awareness of the perpetrator and his family.

3. Divorce Marriage.

In general, the problems arise out of the sirri marriage are not arranged in our law. This means that marriage is either forbidden or valid when the marriage is carried out because it does not have the power of law or evidence of marriage, such as

book of marriage. Then, the marriage brings legal consequences which have no legal recognition and protection.

As well as divorce. The wife is not able to claim divorce because there is no institution that provides legal protection to the perpetrators of the wedding. Yet, it does not mean the divorce has no solution. The way the settlement of divorce in sirri marriage for wives who want to divorce or the husband who wants to divorce his wife can be taken with isbat of sirri marriage, called with isbat to divorce. In general, the decision of isbat of marriage in this set in the compilation of Islamic Act Article 7 Paragraph (2) which reads “in this marriage can not be proved by deed of marriage, can be propose the isbat of marriage in Religious Court”. In addition, the party entitled to apply for isbat of marriage is the husband, wives, children, guardian, and others related to the wedding. The parties entitled to ask isbat of marriage is ruled by the KHI Article 7 Paragraph (4). Now the parties asking petition of isbat of marriage must meet certain conditions, as follow:

1. Submitting a Petition of Itsbat of Marriage to local religious courts.
2. Statement letter from the local Office of Religious Affairs (KUA) claiming that the marriage is not registered.
3. Statement letter from the Head of the Village/Chief describing that the Petitioner has married.

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10 The Compilation of Islamic Law Article 7 Paragraph (2)
4. Copy of Petitioner’s ID.

5. Paying for the cost of things.

6. Others will be determined the judge in the trial.

   After the requirements are complete, next ways to ask isbat of marriage are:

1. The parties proposing isbat of marriage pay first for the cost of things to the local Religious Court.

2. The Petitioner registers his lawsuit to court with religious attach evidence of payment slip through bank. And then the Petitioner returns to home waiting for the calling of the trial.

3. The Chief of Religius Court makes PMH and the council of judges who have been assigned must make PHS (the establishment of trial day) that previously announced within 14 days through the radio. And after 14 days, the new trial can be held. Then the petitioner called by the process server to attend the trial.

4. If the petition is granted, the Religious Court makes a copy for the Petitioner to be handed over to the KUA surrounding of the Petitioner, to note and replace with book of marriage.

Thus, the divorce gets clarity of the law. Though there are implications of the law arising from a sirri marriage that gets isbat. The implication is the emergence

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of civil rights of wife and children. Surely, the wife will demand civil rights such as the distribution of wealth with or the rights of inheritance.

**B. Unregistered Marriage In The Perspective of Islamic Law.**

Sirri marriage or unregistered marriages has some title. There is a call to *syar'i* marriage, *modin* marriage, and *kyai* marriage.\(^\text{12}\) Some appear related to sirri marriage. In the etymology, the word السر has a meaning of confidential. In terminology, sirri marriage means a secretly commanded marriage. Many redefine marriage which be held without *tasyhir* (announcements to the public).\(^\text{13}\) Because done secretly, then there is no registration on its implementation. It means the registration done before the Marriage Registry Officer (PPN) or KUA.

There are 3 forms of marriage. *First*, marriage which is attended by both the party of men and women, without attended by witnesses and the guardian, or attended by the guardian without any witnesses, or vice versa. And they conceal the marriage. There are a difference of opinion among 4 madzhab associated with this marriage. Imam Syafii and Imam Hambali argue that the guardian and the witness are one of the marriage pillars. There is no marriage as there is no guardian and witnesses.

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Therefore, a marriage done without the guardian and the witness of the law is invalid (canceled). As there is in the hadiths of the Prophet, which reads:

لا نكاح الا بولي وشاهدين

"No marriage but with the guardian and the witnesses".

Yet, Imam Hanafi allows marriage without a guardian in marriage while the presence of the witnesses is considered an obligation. Given the function of the witnesses is to publish the marriage. Then, the marriage is considered valid as attended by witness but no guardian.

Imam Maliki requires permission from the guardian. But, it is not explained explicitly whether the guardian must present marriage agreement or simply allow only. Though, Imam Maliki does not allow the woman marries herself. In addition, Imam Maliki stated that a marriage is valid when conducted without the existence of witnesses. Yet, the marriage is required to publish to the community.

The second form of sirri marriage is a marriage conducted meets the fundamentals and requirements of the marriage, but it is not reported or withheld from the community. In this case, the clergies have different of opinion. According to Madzhab Hanafi, Syafi'i, and Hambali, the marriage is valid but makruh. This is due

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to the marriage has perfected the fundamentals and the requirements. Accompanied by two witnesses, thus there is no secret. As if the number of attending more than two men, stated out of secrecy. In addition, this marriage is *makruh* because there is no publication, so that leading to the accusation to both of them\textsuperscript{16}.

Another opinion from Abu tsaur, the presence of the witnesses in the marriage engagement is neither as valid requirement nor as a condition of marriage perfection. So the marriage without witnesses remains valid as long as must be published after the marriage engagement done\textsuperscript{17}.

Meanwhile, according to Madzhab Maliki, such marriage is invalid and *fasakh* (damaged). The reason is the purpose of the witnesses is a notification and socialization which become the conditions of legal marriage. As a request to be withheld, it means notification and socialization purpose do not get fulfilled. In addition, due to conceal the marriage, it covers characteristics of adultery. And as a result, the marriage is damaged in the eye of law\textsuperscript{18}.

By the law of marriage, conditions and pillars of marriage must be carried out by the groom and the bride. As each of the pillars of and conditions of marriage has the purpose to form a healthy relationship and to avoid the bad things. In


addition, the publication or the preaching of marriage is very important and required a must. As in marriage there can be no elements of confidentiality. This is emphasized in the Prophet Muhammad SAW’s sayings, which reads:

"From Amr Bin Abdullah bin Zubair, from his father that Rasulullah SAW has the words : Proclaim (the message of) the marriage".

The Prophet’s sayings above asserts that the command to spread the news of marriage. As the word “proclaim” is fi’il amar. The fi’il amar is a command or showing the obligation that must be done. Besides, the command to do something is attached on the rules of the usuliyyah which reads:

"Basically, the command is to show the obligation".

Back to the hadith above, the command to proclaim marriage is an obligation. When the pillars and conditions of marriage have been performed all by the bride, but there are still elements of concealing the marriage. Then the marriage is

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considered *fasakh* (damaged). One form of the purposes of marriage is to form a happy family and to get serenity live. Therefore, when the marriage is concealed, then the husband and wife are viewed with suspicion and are prejudiced worse by others. Thus, this second form of sirri marriage is invalid according to Maliki Madzhab.

The *third* form of sirri marriage is a marriage conducted meets the pillars and the conditions of marriage and published to the community, but no marriage recording\(^\text{22}\). In this case 4 Madzhab agree that form of marriage is valid and allowed. This is because, conditions and pillars of which established has been implemented. No elements of secrecy, and there are publications that are considered to have enough as evidence to others or community. Although there is no registration or proof of the marriage book in marriage, and is not recognized by the state, but marriage is considered to have been valid in customary law or religion. Basically, the function of the recording of the marriage is only as administration completion and is not related to whether or not valid the marriage is.

Meanwhile, Muhammadiyah also gives *fatwa tarjih* in relation with the sirri marriage. *Fatwa* appearing influenced by the statement from one of BPH managers business charitable in association environment, delivered orally at the Council of

The term sirri marriage is already known among the clerics. Especially in the time of Imam Malik bin Anas. Yet, the sirri marriage known anciently was different with sirri marriage present. In the past, what is meant by sirri marriage was marriage fulfilling fundamentals and conditions of marriage, namely the existence of the bride and the groom, \textit{ijab qabul}, guardian, and witnesses. But just, the witnesses were asked to conceal or not to tell the wedding to the community. Thus, there was no i’lanu of marriage in the form of \textit{walimatul u’rs}. Therefore, the matter is the confidential marriage is valid or not. Now, the sirri marriage known by Indonesian society is the marriage accompanied by the guardian and witnessed by the witnesses, but not done in the presence of the marriage officers or not registered in the KUA for Moslem and in the Office of Civil Registry for non-Moslem. So it does not have a marriage certificate.

In Islamic law, the marriage registration is not ruled. At the time of Rasulullah and friends, it was not known yet. That time, the marriage was valid when meeting the pillars of and conditions of marriage. As known by society, marriage should be \textit{I’lan}kan or announced to the public. Some through the \textit{walimatul u’rs} media. The prophet said:

أعلنوا هذا النكاح واضربوا عليه بالغربال

"Proclaim marriage and beat tambourine". (H.R Ibnu Majah, from Aishah)

أولم ولو بشاة

"Do a walimah though only butcher a goat". (H.R Bukhari, from Abdurrahman bin Auf)

Therefore, if there was a dispute or denial of marriage, then the proving only through vindication of the evidence. However, in next development because of the changes, the age rules and for the good, some Islamic countries, including Indonesia, have made rules to regulate marriage and the register. This is done to marriage implementation order in society and to protect the rights of parties who do the marriage, such as wife’s earning, nasab, inheritance, divorce, and others. Through the marriage registration evidenced by certificate of marriage, as there is dispute between the husband and the wife, or one of the parties is irresponsible, it can do law efforts in order to maintain or obtain the rights for each. This law change is valid in accordance with fiqh rule which reads:

لا ينكر تغير الأحكام بتغير الأزمان.

"Not deniable if legal change is because of the change of age".

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The marriage registration is qiyas to registry in muamalah case. As mentioned in the God’s word in Surat al-Baqara Verse 282:

"O you who believe, when you deal with muamalah not in cash for a specified time, let you wrote it".

Marriage engagement is not ordinary muamalah, but a very strong agreement. As mentioned in Surah an-Nisa' Verse 21:

"How you will take it again, whereas some of you have mingled (mixed) with those other your husband and wife. And they (wives) have taken from you a strong agreement".

If the debt marriage or other working relations must be noted, then the marriage which is more sacred is to note.

Based on such explanation, then Muhammadiyah requires registration of marriage. This is supported by the personal script of Muhammadiyah as decided in

\[26\] Al-Quran. Surah al-Baqarah. Verse 282

\[27\] Al-Quran. Surah an-Nisa’. Ayat 21
the 35th Muktamar Muhammadiyah, if among the natures of Muhammadiyah is "to heed all the laws, Acts, regulations, and valid country philosophical base."²⁸

Related to this problem, Islamic law tries to explore some problems caused by the impact of this marriage thus it requires the assessment to be able to answer the problems. Here are:


Islam teaches to keep and maintain the offspring. Fiqh clergies said that nasab (blood relation) is one of the firm foundations in building a household that can bind between personal with unity of blood. To maintain and keep nasab, Islam suggests marriage as a way to maintain and keep nasab. Islam considers nasab is very important because, Islamic law is related to the family. Therefore, Islam strongly prohibits adultery and all bad things.

Nasab case is the purpose of marriage. Therefore, marriage attempts to establish the people as a khalifah on earth. Child is the next generation of life. Thus, as the parents certainly have great hope for their children. In addition, nasab is the most bestowal and gift. It is to be hoped that every child is born to get the rights that must be accepted by a baby in order to avoid from humiliation and ignorance.

Related to the status of nasab, we have been discussing with that of the various forms of sirri marriage, Islamic law provides various answers from all forms

²⁸ Muhammadiyah Tarjih Fatwa about The Law of Sirri Marriage.
of marriage. From the three forms of sirri marriage, some confirms the marriage while the rest do not. The Logical Law of every valid marriage will get the nasab rights of children, either biological mother and the family or the biological father and the family.

The clergies agree that nasab of children who was born in a valid marriage have nasab to the father. This is empowered by the saying of the Prophet:

"From Abu Hurairah, indeed Rasulullah SAW said : the child is for those who have the bed (husband and wife) and stoning is for only entitled to adulterer " (H.R Muslims).

The explanation of this hadith is as the assertion that the blood relation of children born in valid marriage can be connected with the biological father and mother. However, this assertion is not applicable for adulterer because he does not have blood relation with children born from his action.

Establishment of blood relation through a valid marriage must meet conditions as follow:

1. The husband is the one who can provide offspring. Or according to the agreement of fiqh clergies is a man who has been baliqh. So blood relation may

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not be connected to the man who is not able to copulate or man who does not have gender.

2. According to the clergy Hanafi, at least the child should be born six months after the marriage. As sumi conditions if the wife has copulated before. When the birth of the child is less than six months, then according to the agreement of fiqh clergies, the born children could not be in nasab to the husband. As there is an indication that the pregnancy has happened before the marriage engagement, except the husband refuses to admit it. In recognition of the husband, there must be a statement that the woman is pregnant before marriage engagement done. Therefore, nasab cannot be formed through adultery as well as other civil rights.

3. The husband and the wife meet at least one time after the marriage engagement. So from the meeting there is an indication that the woman is pregnant for six months since expected to meet her husband. Then, the child can be in nasab to his father. For example, when there is a man from the Eastern area and woman from the Western area. After getting married, they are not in meeting for one year, but child was born after six months since the marriage engagement. Then the child can be in nasab to the husband.\(^\text{30}\)

In the explanation, it can be concluded that the relation problem of valid marriage is the child can be in *nasab* to biological father and the family as well as *nasab* with biological mother who bears the child.

Yet, how the child who is born from the sirri marriage whose marriage is invalid in the eye of law is. In this case, of course the marriage is not considered valid, so the copulation of husband and wife is considered adultery. And child born is called child outside of marriage.

Most clergies agree that the child from invalid marriage is not the cause of the child’s *nasab* with the father. Thus, the child should not be connected with the father’s *nasab*. Although biologically is the offspring of the parents. This is in line with the Prophet’s sayings in a hadith:

> "From Abu Hurairah, indeed Rasulullah SAW narrated: the child is for those who have the bed (husband and wife) and stoning is for only entitled to adulterer ". (H.R Muslims)

The hadiths above explains that stoning is for only entitled to adulterer. This means that adultery is not able to determine *nasab* between child and father. So the

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man who ravish mother is only as another man. Thus, it is not obligated to feed, has no rights of legacy and so forth.

In the case of inheritance, according to Imam Abu Hanifah, Imam Malik, Imam ash-Syafi’I, and Imam Ahmad that illegitimate child does not inherit, and does not pass from the biological father or the relatives of the biological father. He only inherits from the family of the biological mother and the family. Besides, Ibn al-Qayyim agrees with Abu Hanifah, Imam Malik, Imam ash-Syafi’I, and Imam Ahmad. He said that the illegitimate child does not have a relation of legacy to the biological father and cannot be demanded earning, but between them there is still an illegitimacy relation.

Related to the illegitimate child, or child from sirri marriage. Ibnu Hazm states that cannot he cannot be in nasab with his father. But he has nasab with the mother. The reason is the action of Rasulullah that connects child’s nasab with the mother who has been in li’an by the husband, not to the father.

The most extreme opinion expressed by clergy Sy’iah Ismailiyah. They argue that illegitimate child neither inherits nor bequeaths, either the father and

relatives or the mother and the relatives. If the child is a girl then she is classified into the *mar’ah dani’ah* (women with low dignity) 36. Of course this opinion is contrary to the principles of human rights and the Law of Children Protection in Indonesia. Clergy Syi’ah’s opinion is considered too hard. So it is not relevant to culture in this country.

In addition, each child who is born from both a valid marriage and invalid marriage is born with the sinless situation. There is also a negative armrest given to illegitimate child is the form of scorn, that we as human possessing pure heart should not do such a thing. As the child is the victim of the action of the biological parents.

Thus, the opinion of Syi’ah Ismailiyah who considers this illegitimate child cannot do nasab himself either to father or mother or the families of both, is not considered ecological justice. This opinion has never happened in the time of ignorance, Rasulullah said:

عن ابي عباس أنه قال قال رسول الله صلى الله عليه وسلم لا مساعاة في الإسلام من ساعية فلم لا يرث ولا يورث في الجاهلية فقد لحق بعصبه ومن ادعى ولدا من غير رشدة فلا يرث ولا يورث. 37

"From Ibn Abbas, verily He said, Rasulullah said : no adultery in Islam, whoever in adultery in the time of ignorance then the child is connected to nasab of the father’s


family and who acknowledges without basis, then not to inherit nor be inherited”. (H.R. Buffalo David)

This is the concept of nasab at the time of ignorance. The nasab of illegitimate children or in an invalid marriage, children were connected with the father’s family. The habit of ignorance society was then removed by Islam, by establishing nasab of children to the biological mother, not the biological father.

There is an event related to the case of nasab. A hadith from Aisha, she said Sa'ad bin Abi Waqas and Abad bin Zan'ah differed in the problem of the baby born of slaves owned by Zam'ah. In general, woman slaves were allowed by the master of the house to "serve" pervert male outside the house. Among men who had ever enjoyed slaves owned by Zam'ah was Utbah bin Abi Waqas. Utbah asked for help to Sa'ad bin Abi Waqas (brother) to take the baby believed as his biological child. But it was denied by the son of Zam'ah (Abad). He claimed that the baby was the son of his father. Thus, the Prophet decided that the baby as the brother of Abad. As the one who deserved the nasab was only the one who was valid to copulate with the mother. And, he was as the master of the woman slave who did bear a baby contested\textsuperscript{38}.

As the nasab booster, Majlis Ulama Indonesia (MUI) gives a fatwa about nasab of illegitimate children or children from invalid marriage. In a fatwa MUI No.

Year 2012 about The Position of Illegitimate Children and The Treatment, explained that the *nasab* of illegitimate children or children from invalid marriage only have blood relation to the mother and the mother’s family, not the biological father. As the information narrated by Bukhari and Muslim\(^{39}\):

"From Aisha R.A that she said: Sa'ad bin Abi Waqqash and Abd Zam’ah were competing against a child, thus Sa’ad said : Rasulullah, this child is the son of my brother Utbah bin Abi Waqqash, he mentioned to me that he is his son, see the similarities. Abd bin Zam’ah also said : the son of my brother Rasulallah, he was born from the bed owner (firasy) of my father from his mother. Then Rasulallah looked at the face of the child and he the possessed clear similarity with Utbah, and Rasulullah said : the child is your brother Abd Zam’ah. The child is for the bed owner/husband of a woman who gave birth (firasy) and stoning is for (punished) adulterer,

\(^{39}\) Fatwa The Majelis Ulama Indonesia. No 11 2012 about The Position of Illegitimate Children and The Treatment.

and take hijab Saudah binti Zam’ah. Aisyah said : he never saw Saudah at all". (H.R Bukhari-Muslim)

"The Prophet narrated about illegitimate children: For the mother’s family". (H.R Abu Daud)

Clergies Madzhab Hanafiyyah, Malikiyah, Hambaliyah, and Syafi’iyah provides an explanation of the hadith above, the meaning of the hadith "Children shall be the right of the owner of bed/husband". First, children belong to the bed owner/husband as he denies or rejects it. When the bed owner denies the children (not admit it) with the procedure stipulated in the shari’a, as doing li’an, then the children are revealed not as his son. The second, if they dispute related to children ownership, between the bed owner/husband with a man who knocks up the wife/woman slave, then the children belong to the bed owner/husband.42

Clergies Madzhab Hanafiyyah, Malikiyah, Hambaliyah, and Syafi’iyah continue. Now, the meaning of "adulterer is the rock" is that man is helpless and desperation. The meaning of desperation here is that the adulterer does not get the rights of nasab over a son that was born from the relationship. Rasulullah deliberately

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42 Fatwa the Majelis Ulama Indonesia. No. 11 Year 2012 about The Position of The Result of Adultery and Treatment Against it.
uses the word "Rock" in His saying. As the Arabic traditions stated that "for him, the rock exists" or "rock is in his mouth" is allocated by people who are in despair of hope⁴³.

Some have opinions that the hadiths above give the sense of the word "Rock" here is stone to death punishment. Imam Nawawi denied the opinions. According to Imam Nawawi, such opinions are weak because the stoning punishment is only allocated to adulterer that is mukhsan (already married). So it can be concluded that the hadith is not intended to explain the stoning punishment, but it is intended to deny children’s rights over the adulterer⁴⁴.

The same opinion is from Imam Nawawi as-Sayyid al-Bakry in book I'anatu at-Thalibin. As follows:

ولد الزنا لا ينسب لآب وانما ينسب لأمه⁴⁵

"Illegitimate child is not in nasab unto the father, only to the mother".

From various hadiths and opinions of experts in Islamic law above, it can be known that the invalid or irreligion marriage is related to adultery. So if the marriage

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⁴³ Fatwa the Majelis Ulama Indonesia. No. 11 Year 2012 about The Position of The Result of Adultery and Treatment Against it.

⁴⁴ Fatwa the Majelis Ulama Indonesia. No. 11 Year 2012 about The Position of The Result of Adultery and Treatment Against it.

has children, then the child is in *nasab* to the biological mother and the family. Another thing if the marriage is valid, then the *nasab* of children from the marriage can be in *nasab* to the biological father and the family.

2. The Distribution of Legacy for The Wife And The Children of The Marriage.

In the Great Dictionary of Bahasa Indonesia, legacy is interpreted as those who are eligible to receive the inheritance\(^46\). As the inheritance has many terms as follow *al-Irts, al-Wirst, al-Wiratsah, at the Turats, al-Mirats, at-Tarikah*. Yet, the inheritance is defined as property rights and is left by the dead\(^47\). So if the dead leave wealth, then it can be taken to distribute to the heir. Rasulullah said:

\[
\text{العلم ثلاثة وما سوي ذلك فضل: آية محكمة أو سنة متبعة أو فريضة عادلة.} \hspace{1cm} ^{48}
\]

"Science is three, and other than all branches, namely: firm verse, shahih sunnah, and the division of the fair inheritance". (H.R Abu Dawud and Ibn Majah)

Wealth heir is very related with blood relation. For the division of the property given to the blood relation people died. In addition the property which must be distributed in accordance with the rules of the division. Rasulullah often reminds

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\(^{46}\) Great Dictionary Bahasa Indonesia.


us to always keep the science of the heir among the advice of the messenger is declaring the following:

"Learn faraa-idl and teach it to people because it is half science and will be forgotten and is the first science drawn from My Ummah". (H.R. Ibnu Majah and Daruquthni)

The word half science mentioned in this hadith is allocated legacy related to hibah, testament, waqaf, heirs, and so forth. Rasulullah also talks to His people that this science will be forgotten and contemplated. This is proven, and if we see only a few clergies who understand the division of legacy.

The case of legacy distribution in the family seems to be a problem that is difficult to be abandoned. Moreover, the legacy case that appears in the marriage is done in a sirri manner. The division of legacy in the marriage is sometimes not reinforced. Thus, it is harmful to the heir as children and wife.

In the discussion of the above, we understand the form of sirri marriage there which justifies, and some forbid. Depending on the implementation of sirri marriage it self, if marriage is valid or legal, Islamic law answer that it is a must to share their wealth to the heir with the terms that have been in syariat. Rasulullah said:

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"From Ibn Abbas, he said, Rasulullah SAW said: give the rights to the experts, then what is more, is for male who is nearly close". (H.R. Bukhari and Muslim)

This hadith gives a description of the obligation that share wealth to the heir. With the marriage registration is valid in line with syariat. Yet, when the husband and wife have different religions then do not bequeath and not bequeathed Rasulullah said:

"From Usamah bin zayd, that the Prophet narrated: Muslim does not inherit the disbelievers and disbelievers do not inherit Muslim". (H.R. Bukhari and Muslim)

"From Abdullah bin Umar said. Rasulullah said: no inheritance of the two religions". (Narrated by Ahmad and "Four" except Tirmidhi.)


So the husband and wife who have different faiths cannot inherit and be inherited, whether or not the marriage is valid in syariat manner.

Meanwhile, the law of inheritance in fasad (damaged) marriage or invalid marriage, then there is no heir to inherit to the father or the father’s family. This opinion is in concert with Imam Abu Hanifah, Imam Malik, Imam Syafi’i, and Imam Ahmad. They argue that there is no heir/inherit from/to the father or relatives of the father. He only bequeaths him self to the mother and the relatives of his mother.53

The same opinion is also presented Ibnu al-Qayyim, Ibnu Hazm. He said that the children from the invalid marriage do not have heir/inherited relation with the father.54

While MUI in Fatwa No. 11 Year 2012 about the position of illegitimate children and the treatment states that Rasulullah has warned to His people with hadith:

عن عمرو بن شعيب عن ابيه عن جده أن رسول الله صلى الله عليه وسلم قال: أيما رجل عاهر بحرة أو أمة فالولد زنا لا يرث ولا يورث 55


55 Fatwas the Majelis Ulama Indonesia. No 11 2012 about the position of illegitimate children and Treatment.
"From amru bin Shu‘ayb, from his father from his grandfather that Rasulullah SAW said: everyone who fornicate woman both free and slave, then the child is illegitimate children, not inherit and not bequeath". (H.R. at-Tirmidhi)

With this basic, MUI makes it there is no inheritance relation between illegitimate children or children of invalid marriage and man causing the birth.

*Nasab* is the main requirements of someone who will get a share of legacy. According to the Islamic law, all of children either men or women and with no respecting age, all have the rights to obtain inheritance from the heir. Yet, when the marriage does not meet the demands of syariat and is considered that marriage is invalid, so there is no inheritance relation between the child and the father or wife with the husband. The children have only the relation of inherit/inherited with biological mother alone.

3. **Divorce marriage.**

The word divorce is derived from the basis of divorcement. In Great Dictionary of Bahasa Indonesia, divorce is unfailing bond of house hold relationship (husband and wife) in a parted ammner. Yet, the divorce in the term *fiqh* called *talaq* or *furqah*, that the sense is to release the bond of marriage using *lafad talaq* or similar

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56 Great Dictionary of Bahasa Indonesia
with it\textsuperscript{57}. But the \textit{fiqh} clergies commonly use the term \textit{talaq} which means separation between husband and wife.

Divorce is a final solution if a house hold is experiencing problems that can not be avoided causing the cracks to the relationship of husband and wife. However, Islamic teachings have the principle to make it harder to do divorce because it is a failed form to realize the purpose of marriage, namely forming the happy and peace family.

In addition, a stronger cord of marriage is also the desired objective of Islam, since a stronger marriage can develop human beings as khalifah and obedient servant of Allah and shari‘ah. Marriage is also able to save mankind from the wicked moral and to keep the individual from the social crimes.

Meanwhile, related to divorce in sirri marriage, it is the same as divorce in general. Yet, the divorce difference is done orally only. There is no ordinary process done in Religious Courts. While for the invalid sirri marriage, it does not need a divorce, because the marriage is not recognized either in the community or in syariat.

Because divorce in sirri marriage done orally only, so the things that must be done by the husband and wife who want a divorce is to announce the divorce to the community. While the form of the announcement is free. Essentially, how the divorce

\textsuperscript{57} Ani Noviana Idallayli. Divorce according to Islamic law. http\textsubscript{www}waninovianablogspotcom.blogspot.sg201012divorce-according-to-the-law-of-islam.html. Accessed on November 1 2015.
can be known by the community. This is very important given negative impact or slander arises from society when divorce is not preached.

C. Legal Protection of Unregistered Marriage.

Sirri marriage’s problems in Indonesia already exist since long time. Although there has been the ordinance of the law for marriage, but its problem is still debated among the community. Moreover, for state officials given by the emphatic witness in form of pension rights from the State for each official who is found doing polygamy and sirri marriage.

Though the case of marriage is found among the community but its existence is kept secret by most community as the secrecy and cause the threat of sirri marriage, especially for the wife and children. The threats can be a civil rights such as severance of children nasab toward the biological father, not-fulfilled legacy and divorce that can be done at any time. Therefore, protection is needed to maintain the rights from various threats. The rights are very important as every human requires the rights to survive their life. Moreover, the children nasab that is not clear so that will cause the unstable mental for them.

Therefore, the government should attempt to provide protection of unregistered marriage perpetrators. The form of protection given by the government is not only to protect victims of sirri marriage, but the ban, reproof, sanctions, fine and even imprisonment while needed. Thus, to provide protection should refer to the Legislation. Yet, as there are things that are not regulated by the law, then
the judge can refer to the unwritten law. It is the regulation or action that is prevalent obeyed or done since ancient times. Because this habit is treatment, then it is existed in form of cultural values or religious norms. Society addresses the unwritten law as customary law\footnote{Asikin Zainal (2012). *Pengantar Ilmu Hukum*. Jakarta: PT RajaGrafindo Persada. Page 79.}. Since the majority of Indonesian society is Moslem, then customary law used is the law of Islam. The terms of the judges allowed to use unwritten law is ruled in the Act No. 7 Year 1989 Article 62 Paragraph (1) about Religious Court that "All the announcement and the decision of the Court, besides must contain the reasons and the basics, also must contain specific articles from the related rules or the source of unwritten law as a base to judge"\footnote{Act No. 7 Year 1989. about Religious Court. Chapter IV. The Procedural Law.}.

Although basically the law of religion allows the marriage, but we as obeyed citizens must respect a State Law Provision. It is clear enough that marriage is forbidden in this land. It is regulated by The Act No. 1 Year 1974 about Marriage Article 2 Paragraph 2 that every marriage is registered according to the regulation\footnote{Act No. 1 Year 1974 about Marriage. in Chapter 1. The Basis of Marriage.}. As well as Peraturan Pemerintah (PP) No. 9 Year 1975 about the implementation of Act No. 1 Year 1974 regarding Marriage Article 45, states that anyone who does not record the nuptials in KUA, then be imposed sanctions fines of Rp. 7,500\footnote{Peraturan Pemerintah (PP) No. 9 Year 1975 about The Implementation of Act No. 1 Year 1974 about Marriage in Chapter IX. Criminal Provisions.}. 
This recording does not simply become State administration only. More than the function of administration, it is considered important to protect human rights related to the continuation of the child status, wealth, heirs and other rights. Need to remember that rights are important in the survival of the household. Each individual requires a right to survive. A sense of justice will be felt when the rights run in accordance with expectation. Many perpetrators of sirri marriage have short age of marriage. Even most of the marriage is terminated by divorce. So the value of the welfare of the purpose of marriage becomes vain. Therefore, the registration is meant to avoid these things. And the Law strives to provide welfare facilities for each pair of husband and wife to the life of the household.

In addition, it is to maintain the dignity of the family that escapes from the slander of the community. Slander does not only attack the husband and wife only. Yet, it spreads to the family, whether the family of the husband or the family of the wife. The impact of slander also is felt by the child. It of course affects the growth of child. Therefore, registration functions are very vital in the family structure.

That avoid so, Then the government of designing Article that relation to marriage isbat. This statute an isbat nikah set in Kompilasi Hukum Islam Article 7 Verse (2) say “In the event marriage unprovable by marriage certificate, can proposed marriage isbat in Pengadilan Agama”.62. Marriage isbat resolution is The

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62 Kompilasi Hukum Islam Article 7 Verse (2)
way of marriage perpetrator unwritten. Then a marriage investors will be any protection just should.

The party entitled to apply for isbat of marriage is the husband, wives, children, guardian, and others related to the wedding. The parties entitled to ask isbat of marriage is ruled by the KHI Article 7 Paragraph (4). Now the parties asking petition of isbat of marriage must meet certain conditions, as follow:

1. Submitting a Petition of Itsbat of Marriage to local religious courts.
2. Statement letter from the local Office of Religious Affairs (KUA) claiming that the marriage is not registered.
3. Statement letter from the Head of the Village/Chief describing that the Petitioner has married.
4. Copy of Petitioner’s ID.
5. Paying for the cost of things.
6. Others will be determined the judge in the trial.

After the requirements are complete, next ways to ask isbat of marriage are:

1. The parties proposing isbat of marriage pay first for the cost of things to the local Religious Court.
2. The Petitioner registers his lawsuit to court with religious attach evidence of payment slip through bank. And then the Petitioner returns to home waiting for the calling of the trial.
3. The Chief of Religious Court makes PMH and the council of judges who have been assigned must make PHS (the establishment of trial day) that previously announced within 14 days through the radio. And after 14 days, the new trial can be held. Then the petitioner called by the process server to attend the trial.

4. If the petition is granted, the Religious Court makes a copy for the Petitioner to be handed over to the KUA surrounding of the Petitioner, to note and replace with book of marriage\(^6\). Basically, marriage isbat is the solution offered by the government for every marriage perpetrator is unregistered. Every marriage is unregistered will be protection after the marriage perpetrator doing marriage isbat. Isbat is important for protecting the rights household.

Furthermore, associated with blood relation of children that the case of the relationships in the study of the positive law is clear enough after the Court issued a controversial decision with a statement that the illegitimate child has a civil relation with the mother and the family of the mother and to the man as the father. This decision becomes polemic in community so that MUI issues a fatwa No. 11 Year 2012 about The Position of Illegitimate Child and Treatment. This fatwa appears influenced by the decision of the Court which has granted the request of the judicial review on Article 43 Paragraph (1) of Act No. 1 Year 1974 about Marriage.

Of course this decision will have a negative impact to all family elements in Indonesia. As the decision of the Constitutional Court is not only the reproduction of the case of sirri marriage in this land. Even worse the decision can legalize these adultery practices. People will be not worried again because illegitimate children will get protection of the law after the verdict is out. With the admission of illegitimate children become valid, then according Amidhan from the Majlis Ulama Indonesia, said that the decision of the Constitutional Court has entered into the jurisdiction of fiqh. Of course, there will be a variety of opinions as the impacts that come out will bring new ideology for Indonesian society.64

However, the nine Judge Council of Constitutional Court have been thinking critically about what has become the decision. Indeed, the nine judges are not mere judge selected by the state. They are the experts of the law who have gotten the strict selection from the government. In this case, the Constitutional Court gives the reasons for the decision. The Judge Council of the Constitutional Court argues that the petitioner’s claim, is the judicial review of Article 2 Paragraph 1 of Act No.1 Year 1974 regarding Marriage, states that "marriage is valid as done according to law of each religion and the beliefs", and Article 2 Paragraph (2) of Act No. 1 Year 1974 about Marriage, states that "every marriage is registered according to the applicable laws", and Article 43 Paragraph (1) of Act No. 1 Year 1974 which states, "

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Illegitimate child only has a civil relation with the mother and the family of the mother”. Based on the explanation of Act, marriage registration is not a determining factor in the legality of marriage. Then the registration is the administrative obligations that are required on legislation. Now, the factor that determines the legality of marriage is the conditions that have been determined by each religion. The importance of administrative obligations in the form of recording, according to the Constitutional Court, can be seen from the two perspectives. First, from the perspective of the State, the registration is meant to guarantee the protection and to meet human rights which it is the responsibility of the State in purchasing protection. Besides, it is to guarantee recognition, respect for the rights and freedom of others, justice, security and public order in the community. Second, the registration is intended to provide proof as in later occurring something which is implicated against the corresponding proved by authentic deed. So the protection given by the state can be established efficiently and effectively. This means, by having authentic evidence of marriage, the rights arising out caused by the marriage can be well protected.

The court weighs that in scientific manner, a woman who is pregnant, first will go through the process of the meeting between the ovum and the sperm through sexual relations. Thus, it causes of fertilization. Therefore, it is just unfair when the law determines that the illegitimate children only have a relationship with the biological mother. And, it is not appropriate if the law makes a man that has caused in the birth of child fled from the responsibility.
Thus, the legal consequences of the birth of the child that is preceded by the sexual relation is the existence of law connection in which there are rights and obligations, that the subject of the law is the children, mother and father. So the children who are born are entitled to legal protection. If it is not, the loss one is illegitimate child. The children are essentially not sinners, because the birth is out of the will. The illegitimate child also often gets unfair treatment from the environment.

As the decision of Constitutional Court, then the law must provide protection against the fate of pure child of marriage sirri which has been conducted by the parents.

The Constitutional Court weighs that based on the description so Article 43 Paragraph (1) of Act No. 1 Year 1974 about Marriage which states, “Child born outside of marriage only has a civil relation with the mother and the family of the mother” must be read “Children born outside of marriage only has a civil relation with the mother and the family of his mother, and a with a male as the father that can be proved based on science (explanation of experts) and technology (DNA test) or other evidences (witnesses and fact) according to the law has blood relation, including civil relation with the family of the father”.

The Constitutional Court finally conveys the decision by the judge and states the First, to grant the petitioners claim for some. The second, Article 43 Paragraph (1) Act No. 1 Year 1974 regarding Marriage that says ”Illegitimate children only have a civil relation with the mother and the family of the mother”, contrary to the Act 1945 of Indonesia Republic throughout vacations removing the civil relation with
a male as the father. *The third*, Article 43 Paragraph (1) of Act No. 1 Year 1974 regarding Marriage that says "*Illegitimate children only have a civil relation with the mother and the family of the mother*", does not have the force of law over vacations removing the civil relation with a male as the father. Thus, the verse must be read "*Illegitimate children only have a civil relation with the mother and the family of the mother and with a male as the father that can be proved based on science (from the experts) and technology (DNA test) or other evidences (witnesses and fact) according to the law has blood relation, including civil relation with the family of the father* ".

*The four*, it is to reject the claims of the petitioners for more and the rest. *The fifth*, to order loading this decision in the news of the Republic of Indonesia as it should be.

So it is decided in the Consultative Meeting of Judges by the Nine Judges, namely Moh. Mahfud MD as Head and member, Ahmad Sodiki, Maria Farida Indrati, Harjono, Ahmad Fadli Sumadi, Anwar Usman, Hamdan Zoelva, M. Akil Mochtar, and Muhammad Alim, each as member.\(^{65}\) Given how important of the nasab problems, so opinion and decision of the Constitutional Court is felt very appropriate to uphold justice in this land.

As amplifier, the Petitioners, namely Machica Mochtar, provided the reasons related to Judicial Review of Act on Marriage that must be submitted to the Nine Constitutional Court Justices. According to the Petitioner, it is a person who directly

experiences and feels the hurt constitutional rights as ruled by the Act of Marriage especially related to Article 2 Paragraph (2) and Article 43 Paragraph (1). This article precisely arises out the law uncertainty regarding the law that results in the loss for the Petitioner related to the marriage status and the legal status of children of marriage.

The constitutional rights that are considered harmful to the Petitioner is the rights guaranteed in Article 28B Paragraph (1) of Constitution 1945 which states, "Everyone has the right to build and continue the family line through valid marriage". And Article 28B Paragraph (2) of Constitution 1945 which states, "Every child is eligible to survive, grow and develop and entitled to protection from violence and discrimination". The article is in contact with human rights that become strong reasons from both the Petitioners to have approval rights on marriage and the legal status of the child. As today, the rights have been hurt by legal norms in the Act of Marriage.

Article 2 Paragraph (2) and Article 43 Paragraph (1) of Constitution of Marriage is considered violated with Article 28B Paragraph (1) and Paragraph (2) of Constitution 1945 and Article 28D Paragraph (1) of Constitution 1945. This results in the marriage of the Petitioner which has done is valid according to the religion embraced by the Petitioner, namely Islam does not get legal certainty. So it causes the
child of marriage does not get law certainty. It is clear before that the rights of the child have been regulated and recognized in Article 28B Paragraph (2)\textsuperscript{66}.

The opinion of the Court and the reasons submitted by the Machica Mochtar associated with \textit{nasab} are enough to make a strong argument or foundation for the law of marriage in Indonesia. Thus, every child that was born from the sirri marriage or invalid marriage according to the positive law is entitled to legal protection from the government. So that justice can be well established.

However, in relation to the settlement of marriage in the way of isbat of marriage, then, it is to prove the children \textit{nasab} is not registered. In this case, for the party to file an isbat of marriage case besides completing requirements, it must also include the evidence of children recognition of previous marriage to judgment. Whether these are witness, DNA test, or bundles related to the child. So that, the children will get protection from the State if later on the day they receive unwilling treatment from other parties. In addition, this protection also gives the force of law related to the children rights, as earning, shelter, education, treatment, and legacy.

Even though the court had granted the request of the Petitioner to provide the status of civil relationship with the father but in other matters related to the legacy, the Constitutional Court decided that there was no right to inherit or bequeath. In the

decision, Iqbal as a child of Machicha Mochtar did not get the legacy from the father, Moerdiono. The reason of the judges rejected the lawsuit from Machica is because the judges still hold fast on the Act No. 1 Year 1974 about Marriage. Thus, the judges rejected civil relation of Iqbal with Moerdiono and the family related to the legacy.

For other considerations, Iqbal’s status could not be stated based on the verdict of the Constitutional Court because it was only recognized as a valid child of Machica and Moerdiono according to the religion law alone as their marriage was not registered. However, the Council of Judges was to grant some of the lawsuit of Machica. One of them was Iqbal announced as illegitimate child. Another reason was that the decision of the Constitutional Court was only related to the rights of the child to obtain clear citizenship, and was not for the rights associated with the legacy.

Indeed, in this case, the child feels loss as the consequence of the parents. The child will be no longer be able to claim to obtain rights. This means that depending on the good of the father and the family of the father. The legacy problem for children of sirri marriage becomes problem that is difficult and is not easily accepted both wife and children. Unless there is awareness of the perpetrator and the family to give some his asset by the way hibah.

Besides by the way hibah. Seems isbat nikah also can be made an other alternative to respect civil rights wife and child. However If the husband will not

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perform isbat nikah to her marriage, Of course the wife is not get the civil rights. And it will not bring justice for a wife and son. Responding to the case, The Wife must try to keep applying a request for isbat nikah. Although later the husband did not attend the litigation process (verstek), therefore, The wife must be assure a judge, If wanna her request to be granted. With enclose strong evidences ,like witness, declaration marriage letter when sirri marriage prosses to be executed (be present), and many others. If request be granted, then the wife have the right to obtain justice properly.

As well as divorce in sirri marriage. Divorce is done orally only. There is no ordinary process done in religious courts. Therefore, which must be required by the husband and wife who want a divorce is to announce their divorce to community. While, the form of the announcement is free. Essentially, it is how divorce can be known by community. This is very important, given the appearance of negative impact or slander from society if it is not proclaimed.

However, in order to give a justice to subject of marriage, namely children, wife, and husband, so the path chosen is how to apply a talaq to Religious Courts. Thus, which must be done first is to confirm the sirri marriage. The Petition is usually called isbat of marriage to divorce. With so, the legal consequences that appears because of confirming sirri marriage to divorce namely, appearing civil rights because the marriage is valid in the eyes of law.
The statute an isbat nikah has mentioned even in the above. namely rule in Kompilasi Hukum Islam Article 7 Verse (2) say “In the event marriage unprovable by marriage certificate, can proposed marriage isbat in Pengadilan Agama”\(^68\). Now for petition of isbat of marriage divorce must meet certain conditions, as follow:

1. Submitting a Petition of Itsbat of Marriage divorce to local religious courts.
2. Statement letter from the local Office of Religious Affairs (KUA) claiming that the marriage is not registered.
3. Statement letter from the Head of the Village/Chief describing that the Petitioner has married.
4. Copy of Petitioner’s KTP.
5. Paying for the cost of things.
6. Others will be determined the judge in the trial.

After the requirements are complete, next ways to ask isbat of marriage are:

1. The parties proposing isbat of marriage divorce, pay first for the cost of things to the local Religious Court.
2. The Petitioner registers his lawsuit to court with religious attach evidence of payment slip through bank. And then the Petitioner returns to home waiting for the calling of the trial.

\(^68\) Kompilasi Hukum Islam Article 7 Verse (2)
3. The Chief of Religious Court makes PMH and the council of judges who have been assigned must make PHS (the establishment of trial day) that previously announced within 14 days through the radio. And after 14 days, the new trial can be held. Then the petitioner called by the process server to attend the trial.

4. If the petition is granted, the Religious Court makes a copy for to be submitted to the office KUA of an applicant the abode of the applicant. 

Thus, the divorce gets clarity of the law. Though there are implications of the law arising from a sirri marriage that gets isbat. The implication is the emergence of civil rights of wife and children. Surely, the wife will demand civil rights such as the distribution of wealth with or the rights of inheritance.

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